

INITIAL STATEMENT OF REASONS

PROPOSED CHANGES TO TITLE 10, CHAPTER 6

REGULATIONS TO IMPLEMENT SB 1495 – SECTIONS 3002 and 3002.2

This regulation proposal (“proposal”) amends Section 3002 and adds Section 3002.2, to the Regulations of the Real Estate Commissioner, California Code of Regulations, Title 10, Chapter 6 (“the Regulations”). This proposal implements new legislation known as SB 1495 (Committee on Business, Professions and Economic Development, Chapter 511 of the Statutes of 2022) (“SB 1495”). In pertinent part, SB 1495 revised the coursework required by Business and Professions Code (“the Code”) section 10153.2 (“Section 10153.2”) that must be completed to qualify for the real estate salesperson license examination or license, and the real estate broker license examination or license (collectively, “real estate license” or “real estate licenses”), by adding certain components and instruction (discussed in more detail below) to the “real estate practice” course set forth in Section 10153.2, effective January 1, 2024.

Pursuant to Division 4, Part 1 of the Code, Sections 10000 through 10508, and related laws (collectively, “the Real Estate Law”), the Real Estate Commissioner and Department of Real Estate (collectively, “the Department”) are responsible for implementing the laws governing real estate licenses issued pursuant to the Real Estate Law, including the laws governing the education required to obtain and renew such licenses. The Department’s general goal in this function is to ensure the protection of consumers who deal with real estate licensees by ensuring that such licensees are sufficiently qualified and educated about matters the Legislature has deemed crucially relevant to the real estate field. Bus. & Prof. Code §§10050, 10050.1, 10071.

PROBLEM STATEMENT

Relevant Background

As part of its implementation of the Real Estate Law, the Department approves courses offered to prospective real estate licensees (“prospective licensees”). Prospective licensees must complete certain real estate education courses set forth in Code sections 10151 and 10153.2 to qualify for a real estate license. Courses that count toward these statutory education requirements must meet all applicable statutory criteria. Such courses are provided to prospective

licensees by accredited institutions¹ and private vocational schools (collectively, “course providers” or “providers”). Courses that count toward the statutory education requirements must receive the Department’s prior approval if they are offered by private vocational schools. Courses offered by accredited institutions need not have the Department’s prior approval, but many accredited institutions seek the DRE’s prior approval anyway to ensure that their students meet all statutory real estate education requirements. Once the Department has approved a real estate education course, the existing Section 3002 of the Regulations (or “current Section 3002”) requires the provider (regardless of whether it is a private vocational school or accredited institution) to obtain the Department’s further review and approval (or “reapproval”) of any such course that is “material changed.”

SB 1495 amended Section 10153.2 (“Amended 10153.2”) to add new subject matter to the real estate practice course requirements set forth therein. With a delayed effective date of January 1, 2024, Amended 10153.2 subdivision (a)(1)(A) requires the following:

1. A component on implicit bias, including education regarding the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases and actionable steps students can take to recognize and address their own implicit biases.
2. A component on federal and state fair housing laws as those laws apply to the practice of real estate. The fair housing component shall include an interactive participatory component during which the applicant shall roleplay as both a consumer and real estate professional.

Beginning January 1, 2024, prospective licensees must complete a real estate practice course containing the components set forth above, to qualify for a real estate license. Correspondingly, as of January 1, 2024, previously-approved real estate practice course curriculums that have not been updated to comply with SB 1495 will not satisfy the education requirements of Code sections 10151 and 10153.2.

¹ An “accredited institution” in this context is defined by Section 10153.5 of the Code as “a college and university” that either: (a) is accredited by the Western Association of Schools and Colleges, or any other regional accrediting agency recognized by the United States Department of Education; or (b) in the judgment of the Real Estate Commissioner, has “a real estate curriculum equivalent in quality to that of an institution accredited as provided in subdivision (a).”

SB 1495 is related to a previous bill, SB 263 (Rubio, Chapter 361, Statutes of 2021) ("SB 263"). SB 263 modified the statutory continuing education requirements for real estate licensees in Code section 10170.5 to require components on implicit bias and fair housing (anti-discrimination) laws, and to include an interactive participatory component on the fair housing laws. SB 263 also added a similar pre-license education requirement to Code section 10151. Various issues prevented implementation of this pre-license requirement by SB 263's January 1, 2023 effective date, so those issues were subsequently addressed with the other pre-license requirements of SB 1495. In 2022, the Department adopted regulations necessary to implement the SB 263 amendments to Code section 10170.5 which are similar to those proposed here.

The Problems

SB 1495 raises the following problems to be addressed by this regulation proposal.

1. Reapproval Process Authority

As indicated, all providers of previously-approved real estate practice courses will have to update their course curricula to include the new components required by SB 1495 (i.e., the implicit bias, fair housing law and interactive participatory components outlined above). Likewise, on and after January 1, 2024, prospective licensees will need to have completed SB 1495-compliant real estate practice courses to qualify for a real estate license. To implement SB 1495 effectively, the Department needs to require course providers to apply for and obtain its reapproval of these updated courses before they are offered to prospective licensees.

Current Section 3002 does not currently authorize the Department to require such reapproval. Its definition of a "material change" requiring reapproval excludes any change made to comply with new legislation or changes in the law. While course providers must update their approved courses for compliance with new legislation if they are to count towards the statutory real estate education requirements, current Section 3002 allows them to do so without obtaining the Department's prior review or approval. This may result in courses offering different content than that which is required by the law. Departmental review and approval of changes to updated course contents will assure that the such courses are in compliance with the law.

Effective implementation of SB 1495 and any parallel future legislative amendments to Section 10153.2 requires the Department's proposed reapproval process for the following reasons. SB 1495 makes significant, substantive changes to the real estate practice course curriculums required by Section 10153.2. Educators' updates to existing course curriculums for compliance with this law will likewise have to be significant and substantive. The new implicit bias, fair housing law and interactive participatory components are only generally described in Amended 10153.2 and no specific explanation of their requirements is provided in that statute or the relevant law. Without specific guidance from the Department, most if not all providers will update their curriculums based on their own interpretations of Amended 10153.2, which are likely to vary widely and be inconsistent across providers, given the generalities within the statute's text. Some providers' interpretations and updated courses might even be contrary to the legislatively intended function of these new components.

The proposed reapproval process is the Department's most efficient and effective method of implementing amendments to the underlying course standards that the legislature makes to Section 10153.2. Using SB 1495 as an example, its effective implementation requires the Department to give course providers specific guidance on how to make their courses comply with it. All course providers will need the Department's specific guidance tailored to their particular questions and issues about the new requirements of Amended 10153.2. The Department cannot address this need by disseminating to providers a general bulletin or restatement of the new law. The Department's proposed reapproval process is the only feasible way for it to give providers such guidance, which they need to understand and comply with SB 1495. This reapproval process is also efficient, because it also allows the Department to ensure that providers are complying with SB 1495. This will, in turn, help to ensure the sufficient uniformity and quality in the updated real estate practice courses offered to prospective licensees.

The proposed amendments to Section 3002 will resolve this problem by authorizing the Department's anticipated reapproval process. The amendments are similar to the regulation adopted to implement the related provisions of SB 263.

2. Clarification of “Interactive participatory component” in Amended 10153.2 subdivision (a)(1)(A)(ii).

As outlined above, beginning January 1, 2024, Amended 10153.2 subdivision (a)(1)(A)(ii) requires course providers to include an “interactive participatory component” in the fair housing law component of their real estate practice courses.

The problem is that this new component is ambiguous, as phrased in the statute, and it is not specifically explained elsewhere in the relevant statutes. All course providers need a more specific definition of this term. Without a specific definition of this term, course providers are likely to interpret and apply it in different and inconsistent ways when updating their real estate practice courses to comply with SB 1495. Even with the Department’s proposed reapproval process for updated courses discussed above, the ambiguity of this term is likely to cause confusion in the field going forward. Absent a more specific definition of this term, providers are likely to misconstrue it, the result of which is likely to be inconsistent and lower quality real estate practice courses received by prospective licensees, and greater instances of non-compliance with SB 1495. This would, in turn, impede the Department’s effective implementation of SB 1495.

This problem can be most efficiently and effectively cured by the Department’s adoption of a regulation that interprets and makes specific the term “interactive participatory component” as used in Amended 10153.2. Proposed new Section 3002.2 of the Regulations (“Section 3002.2”) provides such a definition. This solution is also consistent with the Department’s solution to a similar ambiguity in SB 263. In 2022, the Department adopted a regulation specifically defining this same term in the same way which SB 263 added to the continuing education course requirements for licensees.

Notably, the other ambiguous new components in Amended 10153.2, discussed above, present broader implementation issues that are not as amenable to such a straightforward, regulatory cure. The “interactive participatory component” addressed here is a subcomponent of the new fair housing law education required in Amended 10153.2 subdivision (a)(1)(A)(ii).

PUPROSE, NECESSITY AND BENEFITS OF PROPOSED AMENDMENT/ADOPTION

- The purpose of amended Section 3002 is to authorize the Department's proposed reapproval of all real estate practice courses that are updated to comply with SB 1495. This reapproval process is necessary for the Department's effective implementation of SB 1495 and to ensure prospective licensees receive the training the Legislature found to be necessary.

As noted in the first problem statement above, current Section 3002 does not clearly allow the Department's proposed reapproval process. Section 3002 subdivision (b) currently requires the Department's reapproval of any approved course that is "materially changed" by the provider, but it expressly *exempts* from this requirement any courses changed for the purpose of complying with new legislation or changes in the law. Normally, this exemption encourages course providers to keep their courses up-to-date with the typical changes that the Legislature makes nearly every year to the Real Estate Law and related statutes.

SB 1495, like the related SB 263 legislation before it, stands in contrast to those typical, minor legislative updates, since it made significant, substantive changes to the statutory pre-license education requirements under Section 10153.2. Amended 10153.2 introduces significant new substantive requirements to existing real estate practice course curricula, which necessitates the Department's substantive re-review and reapproval of those updated curriculums. The amendment to Section 3002 is necessary to authorize that reapproval process, as explained above, and to assist providers in complying with the new SB 1495 requirements (especially in the first operative years). The reapproval process will allow the Department to ensure sufficient quality and uniformity in the real estate practice courses offered to prospective licensees throughout the state. By not limiting this reapproval to the present amendment of Section 10153.2, the proposal allows for Departmental response to any further, substantive changes to licensing curriculum from future legislation.

Amended Section 3002 benefits the Department by authorizing its anticipated reapproval process discussed above, which is necessary for

the Department's effective implementation of SB 1495. It benefits course providers by empowering the Department to assist them in understanding and complying with SB 1495.

- The purpose of proposed new Section 3002.2 is to interpret and make specific for the industry, particularly course providers, the meaning of "interactive participatory component" as used in Amended 10153.2 subdivision (a)(1)(A)(ii).

This regulation is necessary for the Department's effective implementation of SB 1495 (Amended 10153.2 subdivision (a)(1)(A)(ii)), because there is general confusion in the industry as to the meaning of this ambiguous term. Without specific guidance, course providers will interpret the term in different and inconsistent ways when developing and/or updating their real estate practice courses. As noted in the second problem statement above, the term "interactive participatory component" is facially ambiguous and not specifically defined in the relevant statutes. The proposed new Section 3002.2 provides a more specific definition of this term, which is necessary for providers to understand and comply with the law.

The benefits of adopting proposed Section 3002.2 are as follows. The proposed section benefits course providers by helping them understand and comply with Amended 10153.2 subdivision (a)(1)(A)(ii), as outlined above. It benefits prospective licensees by helping to ensure that they receive the required instruction on implicit bias and fair housing laws intended by the Legislature when it enacted SB 1495. It benefits the Department by allowing its effective implementation of SB 1495 through its provision of crucial guidance for course providers in regulatory form, as outlined above.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department did not rely upon any technical, theoretical, or empirical study in developing this proposed regulation.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has determined that this regulation proposal has a minor economic impact on business.

Amended Section 3002

As explained above, proposed amended Section 3002 requires all providers of existing, approved real estate practice courses that are updated to comply with SB 1495 to apply for and obtain the Department's reapproval of those courses before offering them to prospective licensees. As of this writing, there are approximately 133 private entities that offer courses that will have to be updated for compliance with SB 1495. These private entity providers will be charged a \$150 fee for their reapproval applications filed on or after January 1, 2024. The Department will waive this fee for such reapproval applications that are filed before January 1, 2024, which will result in a cost to the Department of the waived fees. The Department will not charge any fee for its reapproval of such updated courses offered by accredited institutions. Aside from the aforementioned reapproval fee to be paid by some course providers, this regulation will not cause providers, prospective licensees or others to incur any costs.

Although the Department expects many affected course providers to avoid the reapproval fee by filing their reapproval applications before January 1, 2024, this assessment assumes the maximum possible economic impact (cost) for the maximum possible number of course providers. Notably, amended Section 3002 is phrased to encourage this, which also helps to maximize the amount of SB 1495-compliant real estate practice courses that are available to prospective licensees before January 1, 2024.

New Section 3002.2

The proposed new Section 3002.2 has no economic impact, as it merely interprets and makes specific an ambiguous term in Amended 10153.2, which helps course providers understand and comply with SB 1495. Section 3002.2 does not add any new requirements, nor does it change or expand the existing law. Accordingly, this regulation has no known effect on the business of course providers, prospective or existing real estate licensees, or other stakeholders.

The Department relies on these facts to make the following findings:

- This proposal does not have a significant adverse impact on any businesses in the State of California. As indicated above, it does not add any

new courses or education requirements for prospective licensees, it merely implements the existing SB 1495 statutes by requiring affected course providers to obtain the Department's reapproval of their existing courses updated to comply with SB 1495. Those who do not seek such reapproval before January 1, 2024, to pay a one-time reapproval application fee of \$150. Amended Section 3002 does not impose any other cost, nor does it add anything to the course approval criteria in the Regulations (generally, Sections 3000 through 3004). The rest of this proposal merely clarifies an ambiguous term in Amended 10153.2, and eliminates obsolete text from existing Section 3002. This proposal has no known economic impact on businesses.

- This proposal does not affect the creation or elimination of jobs available within the State of California, for the same reasons indicated above. It will not impact the demand for licensed real estate services.

- This proposal does not impact the creation of new business, nor cause the elimination of existing businesses, in the State of California. As noted, the proposed amendments to Section 3002 chiefly authorize the Department's proposed reapproval process for real estate practice courses that are updated to comply with SB 1495. This process does not impose any significant additional cost on course providers, and it does not change any existing course approval criteria. The proposed new Section 3002.2 merely clarifies certain aspects of the existing law governing real estate practice courses for prospective licensees, and has no cost impact on course providers.

- This proposal does not impact the creation or elimination of any business, nor does it impair or enhance the demand for real estate services, for the reasons indicated in the preceding paragraphs.

- This proposal does not affect the expansion of existing businesses within the State of California. For the same reasons identified in the preceding paragraphs, this proposal does not impact any business, and it does not impair or enhance the demand for real estate services.

- This proposal does not affect the elimination of existing businesses within the State of California. For the same reasons indicated in the preceding paragraphs, this proposal does not impact the work or workloads of existing licensees.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATION AND THE
DEPARTMENT'S REASONS FOR REJECTING THEM

1. *Adopt a regulation clarifying when and how the Department will apply legislative changes to the statutory pre-license education requirements.*

The delayed effective date of the new SB 1495 real estate practice course requirements has raised questions from the field about when and how these requirements will be applied by the Department. In developing these regulations to implement SB 1495, the Department considered adopting a regulation providing more specific information about the application of legislative changes to the statutory pre-license education requirements, allowing interested parties, particularly course providers, to make informed decisions about when to meet the "old" versus "new" statutory education standards.

Specifically, the Department contemplated a regulation stating that (summarily) any legislative change to the pre-license education requirements in Section 10151 and/or Section 10153.2 shall apply to real estate license examination applications received on or after the effective date of the legislative change.

After consideration, the Department concluded that such a regulation is unnecessary, since it would just be reiterating provisions of the relevant statutes.

2. *Do not amend Section 3002, and allow previously--approved real estate practice courses to be updated without Departmental Review.*

As noted above, the existing Section 3002 permits course providers to update their existing, approved courses to comply with new legislation without the Department's prior approval. This allowance encourages providers to keep their courses abreast of minor changes in the underlying laws without the effort and expense of constant re-submission for reapproval. Without this allowance, typical statutory changes would likely impose a burden of annual re-submission on the education providers.

The Department considered and rejected the alternative of not amending Section 3002. If this regulation is not amended to require the Department's reapproval of real estate practice courses updated for compliance with SB 1495, course providers are likely to update those courses based on their own interpretations of without the Amended 10153.2. As indicated, the new requirements of Amended 10153.2 are not specifically

explained in the law, and they are susceptible to a variety of different interpretations, many of which may be inconsistent with the legislatively intended function of SB 1495 or otherwise noncompliant with it. If providers update these courses without the Department's input and guidance in its reapproval process discussed above, the result will likely be lower quality and inconsistency in the contents of real estate practice courses provided to prospective licensees, and greater instances of non-compliance with SB 1495. In any case, without the reapproval process afforded by amended Section 3002, the Department could not ensure sufficient uniformity and quality in these updated courses, and it will be unaware of those "updated" courses that do not satisfy SB 1495.

Accordingly, the Department submits that the reapproval requirement for all existing, approved real estate practice courses that are updated to comply with SB 1495 is necessary for its effective implementation of that law.

DETERMINATION REGARDING USE OF SPECIFIC TECHNOLOGY OR EQUIPMENT

This regulation does not require the use of any specific technology or equipment by any affected party.